

**501 Post, Inc., Debtor-in-Possession, d/b/a Hotel Donatello and Teamsters Automotive Employees Local 665, International Brotherhood of Teamsters, AFL-CIO. Case 20-CA-25486**

May 31, 1994

**DECISION AND ORDER**

BY MEMBERS STEVENS, DEVANEY, AND COHEN

Upon a charge and first and second amended charges filed by the Union on July 14 and 19 and August 26, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on August 27, 1993, against 501 Post, Inc., Debtor-in-Possession, d/b/a Hotel Donatello, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On April 18, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On April 21, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 17, 1993, the regional attorney, notified the Respondent that unless an answer were received by November 24, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times the Respondent, a California corporation, with an office and place of business in San Francisco, California, has been engaged in the business of operating a hotel.

Since October 30, 1992, the Respondent has been a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business.

During the 12-month period ending June 9, 1992, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and during the same period, purchased and received goods valued in excess of \$5,000 which originated from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following described employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees performing work covered by the collective bargaining agreement, excluding all other employees, managers, guards and supervisors as defined in the Act.

Since at least 1980, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period December 1, 1990, to November 30, 1992, with an automatic renewal for the term December 1, 1992, to November 30, 1993.

At all times since 1980, based on Section 9(a) of the Act, the Union has been the exclusive representative of the unit.

About November 16, 1990, the Respondent and the Union entered into a collective-bargaining agreement concerning terms and conditions of employment of the unit, that agreement was to remain in effect for the period December 1, 1990, through November 30, 1992, and from year to year thereafter.

Since about June 9, 1992, the Respondent failed to continue in effect all the terms and conditions of employment of the agreement by failing to pay accrued vacation and sick leave to unit employees who were terminated.

The Respondent engaged in the conduct described above without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in

good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed to continue in effect all the terms and conditions of the agreement by failing to pay accrued vacation and sick leave to unit employees who were terminated, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall also order the Respondent to give effect to and comply with all the terms and conditions of its collective-bargaining agreement. The Respondent shall also be ordered to make whole unit employees for loss of earnings or benefits they may have suffered as a result of its failure to give effect to and comply with the terms of its collective-bargaining agreement, such amounts to be computed in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, 501 Post, Inc., Debtor-in-Possession, d/b/a Hotel Donatello, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Teamsters Automotive Employees Local 665, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the appropriate unit and refusing to abide by the terms of the collective-bargaining agreement with the Union. The appropriate unit consists of:

All full-time and regular part-time employees performing work covered by the collective bargaining agreement, excluding all other employees, managers, guards and supervisors as defined in the Act.

(b) Failing to pay accrued vacation and sick leave to unit employees who were terminated and failing to continue in effect all the terms and conditions of employment of the 1990 agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and abide by the terms of the collective-bargaining agreement with the Union.

(b) Comply with and give full force and effect to all the terms and conditions of employment of the 1990 agreement with the Union.

(c) Make whole unit employees for any loss of earnings or benefits they may have suffered because of the Respondent's unlawful failure to pay accrued vacation and sick leave to unit employees who were terminated, with interest.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 1994

James M. Stephens,	Member
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Dennis M. Devaney,	Member
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Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse bargain collectively with Teamsters Automotive Employees Local 665, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of our employees in the appropriate unit and WE WILL NOT

refuse to abide by the terms of the collective-bargaining agreement with the Union.

WE WILL NOT fail to pay accrued vacation and sick leave to unit employees who were terminated and to continue in effect all the terms and conditions of employment of the 1990 agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and abide by the terms of the collective-bargaining agreement with the Union. The bargaining unit consists of:

All full-time and regular part-time employees performing work covered by the collective bargaining agreement, excluding all other employees, managers, guards and supervisors as defined in the Act.

WE WILL comply with and give full force and effect to all the terms and conditions of employment of the 1990 agreement with the Union.

WE WILL make whole unit employees for any loss of earnings or benefits they may have suffered because of our unlawful failure to pay accrued vacation and sick leave to unit employees who were terminated, with interest.

501 POST, INC., DEBTOR-IN-POSSESSION,  
D/B/A HOTEL DONATELLO